

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID M. FAURE,

Defendant.

8:16CR30

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Motion for immediate release pursuant to the First Step Act, ECF No. 64.

Defendant David M. Faure was sentenced on August 29, 2016, to a term of 15 months imprisonment on Count I of the Indictment (possession with intent to deliver mixtures or substances containing detectible amounts of marijuana, LSD, and cocaine) and 60 months imprisonment on Count II of the Indictment (use of a firearm in connection with the crime described in Count I), consecutive, to be followed by three years of supervised release on Count I and four years on Count II, concurrent. See Judgment, ECF 50.

The Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010), effective August 3, 2010, reduced the penalties for certain crack cocaine offenses. Section 404 of the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194 (2018), permits but does not *require* sentencing judges to reduce sentences imposed prior to the Fair Sentencing Act. The First Step Act specifically *prohibits* a sentencing judge from reducing a sentence that was previously imposed in *accordance* with the Fair Sentencing Act.

The Fair Sentencing Act is inapplicable to the Defendant's sentence for two reasons. First, he was sentenced after August 3, 2010. Second, his charges did not involve crack cocaine. Accordingly,

IT IS ORDERED:

1. The Defendant's Motion, ECF No. 64, is denied; and
2. The Clerk will mail a copy of this Memorandum and Order to the Defendant at his last known address.

Dated this 1st day of February, 2019.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge